

Florida House of Representatives



INTERIM REPORT ON CHARTER SCHOOL ACCOUNTABILITY

EDUCATION INNOVATION AND CAREER PREPARATION COMMITTEE

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I. Introduction

A. Overview of Florida Charter Schools

In 1996, the Legislature enacted s. 228.056, F.S., Florida's first charter school law.¹ Charter schools are nonsectarian, public schools that operate under a performance contract, referred to as a "charter." The charter frees the school from many regulations applicable to traditional public schools in order to encourage the use of innovative learning methods while holding the school accountable for academic and financial results. Charter schools are to be funded in the same manner as traditional public schools.²

Since 1996, the number of charter schools in Florida grew from five to 356 during the 2006-2007 school year.³ These schools served 99,374 students. As of December 2007, there are 350 charter schools in 41 of Florida's 67 school districts. More than half (190) of these schools are located in five districts: Broward (48); Dade (58); Hillsborough (26); Palm Beach (35); and Polk (23).⁴

Charter schools are open to all students residing within the district. Enrollment preference may be given to siblings of current charter school students or children of a charter school employee or governing board member. A charter school may limit enrollment⁵ in order to target specified student populations.⁶

B. Charter School Accountability

Early charter school legislation indicated that charter schools would "establish a new form of accountability for schools" by providing an "increase [in] choice of learning opportunities for students."⁷ Parental choice was a fundamental principle behind the statute. Because parents are most likely to select only the highest performing charter schools, parental choice operates to hold charter schools accountable for producing positive student learning outcomes. Parental choice also fosters healthy competition between charter schools and traditional public schools, improving the performance of both.⁸

Florida's initial charter school statute granted sponsoring authority to district school boards. Each district was responsible for approving new charter schools and monitoring their academic and financial performance.⁹ Charter schools were subject to an annual

¹ Chapter 96-186, L.O.F., *initially codified* as s. 228.056, F.S., *redesignated in 2002* as s. 1002.33, F.S.

² Section 1002.33(1), (2), (7), (9) (16), and (17), F.S.; Appendix B.

³ *Choice Facts – Florida Charter Schools*, Florida Department of Education (DOE), July 2007.

⁴ Online Charter School Directory, DOE, December 2007, *available at*:
http://www.floridaschoolchoice.org/Information/Charter_Schools/Directory/

⁵ Section 1002.33(10), F.S.

⁶ Demographically, charter school student populations are very similar to traditional public school student populations, with the exception that traditional public schools serve a larger percentage of free or reduced price lunch eligible students (45.8 percent) than charter schools (35.2 percent). *See* Appendix A.

⁷ Section 228.056(2)(d) and (e), F.S. (1996).

⁸ *Florida's Charter Schools: A Decade of Progress*, DOE, November 2006.

⁹ Section 228.056(4), F.S. (1996).

financial audit,¹⁰ annual reporting,¹¹ and a population-based cap on the number of new charter schools that could operate in each district.¹²

Since 1997, Florida's charter school statute has been amended annually except in 2005. These changes have included: removing the statutory caps on the number of charter schools that could be established; expanding the types of entities that may serve as sponsors; and requiring greater accountability for the charter school system in the areas of applications and charters, sponsorship, organization and governance, academic performance, class size reduction compliance, and financial management. This report reviews recent research and data in each of these areas and presents current law, findings, and recommendations for policy options that the Legislature may wish to consider.¹³ A summary of recommended policy options is contained in Appendix D.

II. Law, Findings, and Policy Options

A. Applications and Charters

1. Law --

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law. The application must contain:

- A detailed curriculum plan aligned with the Sunshine State Standards;
- Goals for improving student learning and measuring improvement; and
- An annual financial plan for each year of operation requested (up to five years) that sets forth the school's anticipated funds and assets, a spending plan, and sound fiscal policies for managing the school.¹⁴

Applications are to be submitted by August 1st of each year, unless the sponsor chooses a later date. A sponsor must approve or deny the application within 60 days of receipt. If denied, the sponsor must notify the applicant and the DOE in writing of its reasons within ten days of its decision. As explained in Appendix C, the applicant may appeal a denial to the Charter School Appeal Commission.¹⁵

When an application is approved, the sponsor must deliver a charter to the applicant within 60 days, and the applicant and sponsor then have 75 days to negotiate its contents. The charter, which must address issues that include the following, may be for

¹⁰ Section 228.056(8)(g), F.S. (1996).

¹¹ Section 228.056(9)(d), F.S. (1996).

¹² Section 228.056(5), F.S. (1996).

¹³ Research reviewed included reports by the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Florida Department of Education, and national research institutes, as cited herein, and a four-part series of articles published by the Orlando Sentinel in 2007. See McClure, V. and Shanklin, M. (2007, March 25 through 28). "Charter Schools Missing the Grade." *Orlando Sentinel*. Last retrieved December 25, 2007, from http://www.orlandosentinel.com/news/orl-special-charterschools-part1_0_34927.htmlpage.

¹⁴ Section 1002.33(3)(a) and (6)(a), F.S.

¹⁵ Sections 1002.33(6)(b) and (c) and 1002.335(9), F.S.

a term of four or five years,¹⁶ and must be signed by the charter school's governing board:

- The students to be served, including ages and grade levels;
- The curriculum's focus and instructional methods to be used;
- Baseline standards of student academic achievement, outcomes to be achieved, and methods of measurement to be used;
- The method for resolving conflicts between the governing body and the sponsor;
- Admission and dismissal procedures and the school's student conduct code;
- Methods for achieving a racial/ethnic balance reflective of the community served;
- The financial and administrative management of the school, including experience required for management positions and a description of internal audit controls;
- Asset and liability projections;
- A description of plans to reduce losses and ensure student and faculty safety;
- An agreement that the charter may be cancelled if the school has made insufficient progress with student achievement; and
- Identification of the school's facilities, teacher qualifications, governance structure, and timetables for implementing each element of the charter.¹⁷

The Department of Education (DOE) is statutorily required to develop a model charter school application. Additionally, in 2006, the Legislature required the DOE to: (a) begin offering training and technical assistance to charter school applicants, which addresses business plan development, startup cost estimation, enrollment projection, and available state and federal funding; and (b) develop a model charter and charter renewal format.¹⁸ The model documents are to be used as guidelines by sponsors.¹⁹

2. Findings --

Applicant Training: The DOE conducted a charter school applicant training most recently on July 17, 2007, for applicants wishing to start schools in the 2008-2009 school year. Such trainings are made accessible year round and statewide via the web and, according to DOE representatives, will be offered annually each summer.²⁰ Additionally, some districts provide their own applicant training.

Application and Evaluation: Other than the contents required by statute for a charter school application, the contents of such applications vary by district. In June 2007, the DOE, as directed by statute, posted a model charter school application on its website.²¹

Statute does not specify a process for evaluating applications; however, the DOE has developed and posted an evaluation process on its website. It provides that each

¹⁶ Initial charter terms for a charter operated by a municipality, a charter lab school, or a charter school operated by a private non-profit may be up to 15 years. Section 1002.33(7)(a)12., F.S.

¹⁷ Sections 1002.33(7) and 1002.335(11)(a), F.S.

¹⁸ Chapter 2006-190, s. 1, L.O.F., *codified at* s. 1002.33(6)(g) and (21), F.S.

¹⁹ Section 1002.33(21), F.S.

²⁰ See DOE, Office of Independent Education and Parental Choice, Training Opportunities *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/

²¹ See Model Charter School Application *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/files/cs_application.pdf

charter school application should be reviewed, and each applicant should be interviewed, by an evaluation team comprised of sponsor staff and/or external experts who collectively have education, business, non-profit, financial, legal, and organizational expertise. The team is to rate the applicant using the DOE Application Evaluation Instrument and to submit its recommendations to the sponsoring board.²²

Charters: As with charter school applications, the contents of charters vary by district with the exception of those contents required by statute. As directed by statute, the DOE, after conducting workgroups with school districts and charter schools, has developed draft standard charter and charter renewal formats. These documents are currently pending DOE legal review and are expected to be released in early 2008.

Reports: In 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed Florida's charter school application process and found that its requirements are extensive, but reasonable as they, "ensure that school boards have the information necessary to assess whether an applicant has set forth a comprehensive plan for the academic success and financial viability of the charter school."²³ Additionally, OPPAGA found, for the three school years between 2001 and 2004, that 165 of the 293 charter school applications filed statewide (56 percent) were granted and that the State Board of Education (SBE) reversed the denials in 18 of 32 application denial appeals. OPPAGA concluded that the state's appeal process helps to ensure that district application denials are fair.²⁴

Data from the DOE since the OPPAGA report for the 2005-2006 and 2006-2007 school years indicates that 140 of the 212 charter school applications filed statewide (66 percent) were granted and that the SBE reversed the denials in five of 17 application denial appeals.²⁵

3. Policy Options --

As statute does not address the evaluation process for charter school applications, the Legislature may wish to consider incorporating the DOE's model evaluation process and evaluation instrument into statute. Such reference would provide guidance to, and encourage uniformity among, sponsors when evaluating applications.

B. Sponsorship

1. Law --

Sponsors: Charter schools currently in existence are sponsored by a district school board or, in the case of a charter lab school, by a state university.²⁶ In 2006, the Legislature created a new option for sponsorship with the establishment of the Florida

²² See DOE, Office of Independent Education and Parental Choice, Overview of the Florida Charter School Application Process and Florida Charter School Application Evaluation Instrument available at http://www.floridaschoolchoice.org/Information/Charter_Schools/

²³ *Charter School Application Requirements Are Reasonable; Financial Management Problematic*, OPPAGA, Report No. 05-11, March 2005, pp. 2-3.

²⁴ *Id.* at 4-5.

²⁵ E-mail correspondence with DOE representatives dated December 14, 2007; Appendix C.

²⁶ Section 1002.33(5)(a), F.S.

Schools of Excellence Commission (FSEC).²⁷ In a district that has not been granted the exclusive authority to approve charter schools, the FSEC may sponsor charter schools and approve municipalities, state postsecondary institutions, and regional educational consortia to act as charter school cosponsors.²⁸

Florida law authorizes all sponsors to exercise general oversight over their sponsored schools and specifically requires them to:

- Monitor and review the charter school in its progress toward the goals established in the charter;
- Monitor the revenues and expenditures of the school;
- Ensure that the school participates in the state's education accountability system and report to the DOE if it falls short of its charter's performance measures; and
- Submit the annual school accountability progress reports received from the schools' governing boards to the Commissioner of Education for inclusion in the annual DOE analysis and report on charter school performance.²⁹

A sponsor may terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of fiscal management;
- A violation of law; or
- Other good cause shown.³⁰

A sponsor must provide 90-days' written notice to the charter school prior to termination or non-renewal, except that, "a charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened."³¹ Under these circumstances, the school district is to assume operation of the school.³²

In exchange for the up to five percent administrative fee discussed in Appendix B, sponsors must also provide administrative and educational services that include: contract management; full-time equivalent (FTE) student and data reporting; exceptional student education program administration; administration and reporting for federal programs; test administration for the FCAT and other assessments; processing of teacher certification data; and student information services.³³

In addition to the above-described responsibilities, statute requires the FSEC to:

- Develop and disseminate best practices and accountability standards;

²⁷ Chapter 2006-302, L.O.F., *codified at* s. 1002.335, F.S.

²⁸ Section 1002.335(4)(a), F.S.

²⁹ Sections 1002.33(5) (b) and (9)(l) and 1002.335(4)(b)5. and 18. and (11)(a), F.S.; *See also* Section 1002.33(23), F.S., (requiring the DOE to annually provide an analysis and comparison of the overall performance of charter school students versus comparable public school students).

³⁰ Sections 1002.33(8) and 1002.335(4)(a)1. and (11)(a), F.S.

³¹ Sections 1002.33(8)(d) and 1002.335(4)(a)1. and (11)(a), F.S.

³² *Id.*

³³ Sections 1002.33(20) and 1002.335(11)(b), F.S.

- Make recommendations to the Legislature for revisions to qualifications, accountability standards, and revocation criteria applicable to cosponsors;
- Collaborate with cosponsors to serve low-income, low-performing, gifted, or underserved student populations; and
- Conduct training for FSEC charter school governing board members.³⁴

School District Sponsorship Exclusivity: On or before March 1st of each year, a district school board may present a written resolution to the SBE indicating that it wishes to retain the exclusive authority to sponsor charter schools within its boundaries.³⁵ If granted, the FSEC may not approve charter schools within the district.³⁶

Exclusivity may not be granted to a district that has never approved a charter school, unless it has never received an approvable application.³⁷ Exclusivity is to be granted if the SBE determines that the district has provided fair and equitable treatment to its charter schools during the past four years. To make this determination, the SBE is to consider input from charter schools within the district and a district resolution that addresses whether the district has:

- Complied with charter school law;
- Accurately charged authorized administrative costs;
- Permitted charter schools to purchase district services at cost;
- Not placed a moratorium or enrollment caps on charter schools;
- Complied with SBE orders pertaining to charter schools;
- Assisted charter schools in meeting facility needs;
- Fairly distributed federal and state grant funds;
- Provided staff and resources to charter schools at cost; and
- Complied with school choice program requirements.³⁸

State Board of Education rule provides that a grant of exclusivity lasts from July 1st of the year in which granted until June 30th of the next calendar year.³⁹

2. Findings --

FSEC: As of December 2007, the FSEC has contracted with Nova Southeastern University to be its fiscal agent and is in the process of hiring staff and establishing a data monitoring system for use in administering charter schools. The FSEC set charter school application deadlines of October 31, 2007 and December 15, 2007, for new and existing charter schools, respectively, and received 55 applications. One municipality, Hialeah, has been approved to act as a cosponsor.⁴⁰

School district exclusivity: For Fiscal Year 2007-2008, 41 school districts filed applications for exclusivity with the SBE. Three districts withdrew their applications prior

³⁴ Section 1002.335(4)(b), F.S.

³⁵ Section 1002.335(5)(c), F.S.

³⁶ Section 1002.335(5)(i), F.S.

³⁷ Section 1002.335(5)(g), F.S.

³⁸ Section 1002.335(5)(e), F.S.; Rule 6A-6.0783, F.A.C.

³⁹ Rule 6A-6.0783, F.A.C.

⁴⁰ State Board of Education Meeting, October 18, 2007, Testimony of Dr. Rudy Rodriguez, Executive Director, Florida Schools of Excellence Commission; Conference with FSEC staff on December 14, 2007.

to consideration⁴¹ and the remaining 38 applications were considered by the SBE during its September and October 2007, meetings. The SBE granted exclusivity to three districts;⁴² denied exclusivity to eight districts on grounds that they did not have a history of sponsoring charter schools;⁴³ and denied exclusivity to the remaining 27 districts on grounds that they had not satisfied 100 percent of the factors constituting fair and equitable treatment of charter schools.⁴⁴

Reports: In a May 2006 report, Education Sector, an education policy think tank located in Washington D.C., recommended that Florida utilize the annual report on the performance of charter schools, which is statutorily required to be issued by the DOE, as an opportunity to publicize the performance of charter school sponsors.⁴⁵ Similarly, a national report on quality in charter school sponsorship recommended that charter school states aggregate and publicize charter school performance according to sponsors; thereby, allowing performance to be compared among sponsors.⁴⁶

Currently, the annual charter school report required to be issued by the DOE under s. 1002.33(23), F.S., provides an analysis and comparison of the overall performance of charter school students versus traditional public school students at the statewide level.⁴⁷ Charter school performance aggregated by sponsor is not included in the report, nor is it otherwise readily accessible.

3. Policy Options --

School district exclusivity: The exclusivity application process appeared to be a labor-intensive, time-consuming task for school districts, the DOE, and the SBE. Many district applications were nearly 1000 pages long. Three persons were required to review and score each application and two SBE meetings were needed to rule on the applications.⁴⁸ In order to make this process less burdensome on an annual basis, the Legislature may wish to consider amending statute to specify that a grant of exclusivity lasts for a specified period of years, e.g., three to five years.

Sponsor performance reporting: In order to make Florida charter school sponsor performance easily accessible for public oversight, the Legislature may wish to consider amending s. 1002.33(23), F.S., to require the DOE's annual charter school report to provide performance data aggregated by sponsor.

⁴¹ Applications were withdrawn by the school districts in Brevard, Citrus, and Santa Rosa Counties.

⁴² Orange, Polk, and Sarasota County School Boards.

⁴³ Baker, Charlotte, Clay, DeSoto, Gilchrist, Hardee, Jefferson, and Suwannee County School Boards.

⁴⁴ Bay, Broward, Collier, Duval, Escambia, Flagler, Gadsden, Hernando, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Martin, Miami-Dade, Monroe, Nassau, Osceola, Palm Beach, Pasco, Pinellas, St. Johns, St. Lucie, Sumter, Volusia, and Wakulla.

⁴⁵ *Florida Charter Schools: Hot and Humid with Passing Storms*, Education Sector, May 30, 2006, p. 26.

⁴⁶ *Holding Charter Authorizers Accountable: Why It Is Important and How It Might Be Done*, National Charter School Research Project at the Center on Reinventing Public Education, February 2006, pp. 5-6.

⁴⁷ See *Florida's Charter Schools – A Decade of Progress*, DOE, November 2006.

⁴⁸ See Rule 6A-6.0783, F.A.C. and Summaries of District Application Reviews available at <http://www.floridaschoolchoice.org/CSSStandardReview/PublicDistrictOption.aspx>.

C. Organization and Governance

1. Law --

Organization: Florida charter schools are required to be operated by a municipality or to be organized as, or operated by, a nonprofit organization. As such, a charter school may be either a public or private employer. Further, charter schools are authorized to contract for services with an individual or group of individuals who are organized as a partnership or a cooperative. Thus, a Florida charter school may be organized as a nonprofit, but managed by a for-profit educational management organization.⁴⁹

Governance: Each charter school must have a governing board that is responsible for: exercising continuing oversight over the school's operations; adopting and maintaining an annual operating budget; and submitting the school's annual progress report to the sponsor.⁵⁰ In 2006, the Legislature amended the board's responsibilities to also include:

- Ensuring that the charter school has retained the services of a certified public accountant (CPA) or auditor for the annual financial audit;
- Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan; and
- Monitoring the school's compliance with a financial recovery plan.⁵¹

Training: Legislation adopted in 2007 requires governing board members of non-FSEC charter schools to participate in governance training approved by the DOE that includes instruction on government in the sunshine, conflicts of interest, ethics, and financial responsibility.⁵² Statute also requires the governing board members of an FSEC-sponsored or cosponsored charter school to attend training, which includes instruction on best practices for governance and constitutional, statutory, and SBE rule requirements, within 90 days after FSEC approval of a school.⁵³

Conflicts of interests: Florida's charter school statute does not regulate charter school governing board members or employees regarding conflicts of interest. Depending on the school's organizational structure, its governing board and/or employees may be subject to various state and federal laws governing conflicts of interest for public officers and employees or nonprofit organizations.

If the charter school is operated by a municipality, the Code of Ethics for Public Officers and Employees in ch. 112, F.S., governs. Under the Code, public officers, agency employees, and local government attorneys are prohibited from: using their position for private gain; purchasing, renting, or leasing any realty, goods or services for their agency from a business entity in which they have a material interest; and entering into business relationships with an entity that is regulated by or does business with the agency for which they serve.⁵⁴

⁴⁹ Section 1002.33(12)(i), F.S.

⁵⁰ Section 1002.33(9)(i),(j), and (l), F.S.

⁵¹ Chapter 2006-190, s. 1, L.O.F., *codified at* s. 1002.33(9)(k), F.S.

⁵² Chapter 2007-234, s. 5, L.O.F., *codified at* s. 1002.33(9)(k)4., F.S.

⁵³ Section 1002.335(4)(b), F.S.

⁵⁴ Section 112.313, F.S.

If the charter school is operated by a nonprofit entity, Florida law provides that transactions between a nonprofit corporation and one or more of its directors, or to entities controlled or influenced by a director, may be void or voidable unless:

- The relationship or interest is disclosed or known to the board of directors;
- The relationship or interest is disclosed or known to the members entitled to vote on the contract or transaction; or
- The contract or transaction is fair and reasonable to the corporation at the time it is authorized.⁵⁵

Further, if a nonprofit charter school chooses to obtain tax-exempt status, it must follow federal law governing conflicts of interest. Tax exempt organizations may not enter into transactions that benefit persons in certain influential positions within the organization or “disqualified persons.”⁵⁶ Whether a person has substantial influence over the organization’s affairs is determined by the facts and circumstances of the transaction.⁵⁷ Generally, disqualified persons include individuals with a substantial financial stake in the organization, persons in positions of authority over the organization’s operations or finances, and family members of such persons.⁵⁸

2. Findings --

Training: On October 17, 2007, in order to implement the statutory requirement for DOE-approved governing board member training for non-FSEC charter schools, the DOE published a Notice of Development of Rulemaking in the Florida Administrative Weekly for 6A-6.0784, F.A.C. The notice states that the proposed rule’s purpose is to:

[E]stablish procedures for the approval of charter school governance training submitted to the Department of Education by potential training providers. As all governing bodies of charter schools must participate in approved governance training, the effect will be consistency in the training to include but not be limited to government in the sunshine, conflicts of interest, ethics, and financial responsibility.

As of the date of this report, the FSEC has not yet approved any charter schools. Thus, it has not yet begun governing board training for its schools.

Conflicts of Interest: In recent years, the Charter School Appeal Commission (CSAC) and independent auditors have reported the alleged occurrence of related-party transactions and other conflicts of interest by charter school employees and governing board members.⁵⁹ The CSAC has cited such conduct in its recommendations to the

⁵⁵ Section 617.0832(1), F.S.

⁵⁶ 26 U.S.C.A. 4958.

⁵⁷ U.S. Dep’t of the Treasury, Internal Revenue Service, *Tax Exempt Status for Your Organization*, Publication 557 (March, 2005) available at <http://www.irs.gov/pub/irs-pdf/p557.pdf>.

⁵⁸ 26 U.S.C.A. 4958(f)(1).

⁵⁹ See, e.g., *Charter School Appeal Commission: Technical Assistance Paper: Appeal of Believer’s School of Learning, Inc.: Notice of Intent Not to Renew a Charter Contract*, October 16, 2007, p. 3 (documenting the alleged payment of \$26,000 to a consulting firm owned by charter school’s principal); *Charter School Appeal Commission: Technical Assistance Paper: Appeal of Survivors Charter School of West Palm Beach and Survivors Charter School of Boynton Beach: Termination of Charter Contracts*, May 16, 2006, p. 6

SBE as grounds for denying the appeals of certain charter schools.⁶⁰ For the past four years, the Florida Auditor General has published reports indicating the existence of inadequate separation of staff duties and inappropriate expenditures in the audit reports for numerous Florida charter schools.⁶¹

At least 13 states have statutory provisions addressing ethics and conflicts of interest issues for charter school employees and governing board members.⁶² The methods used to address these issues vary from state to state. Charter school laws in Hawaii and New York require a charter school applicant to state its ethics and conflict of interest policies in the charter school application.⁶³ California law provides that a finding of an “illegal or substantially improper use of charter school funds for the personal benefit of any officer, director, or fiduciary of the charter school” is grounds for revoking a school’s charter.⁶⁴ The laws of Idaho, Louisiana, New Jersey, Oklahoma, South Carolina, Tennessee, and Virginia define charter school employees and board members as public officials, and subject such persons to statutory provisions banning conflicts of interest, nepotism, and improper influence by public employees and officials.⁶⁵ Similarly, the laws of Massachusetts, Pennsylvania, and Texas define charter school employees and board members as public officials and require them to file a conflicts disclosure statement.⁶⁶

3. Policy Options --

The Legislature may wish to consider amending charter school law to specifically and consistently address conflicts of interest issues for governing board members and

(documenting the sponsor’s numerous audit items of concern for charter school, which included: nepotism; unauthorized cash expenditures of public funds; co-mingling of public and private funds; inappropriate expenditures of public funds; and inappropriate business practices); *New Road to Learning, Inc. D/B/A Jaqueline Harris Preparatory Academy, A Component Unit of the Escambia County District School Board: Financial Statement*, June 30, 2006, p. 24 (indicating a related-party transaction wherein charter school leased facilities from a company owned by school’s executive director); *Joseph Littles Nguzo-Saba Charter School, Inc.: Independent Auditor’s Report and Financial Statement for the Year Ended June 30, 2006*, September 8, 2006, p. 18 (indicating related-party transactions wherein charter school liabilities included an interest-free promissory note to wife of school principal in the amount of \$66,000 and a seven percent per annum demand note to principal in amount of \$120,000).

⁶⁰ Charter School Appeal Commission, Recommendation to SBE, October 16, 2007: *Believer’s School of Learning, Inc v. School Board of Bradford County*, DOE Case No. 2007-1387 (October 2007) ; and Charter School Appeal Commission, Recommendation to SBE: *Survivor’s Charter School, Inc., Boynton Beach v. School Board of Palm Beach County*, DOE Case No. 2006-1169.

⁶¹ *Annual Report: November 1, 2003 through October 31, 2004*, Florida Auditor General, p. 43; *Annual Report: November 1, 2004 through October 31, 2005*, Florida Auditor General, pp. 52-53; *Annual Report: November 1, 2005 through October 31, 2006*, Florida Auditor General, pp. 40-41; and *Annual Report: November 1, 2006 through September 30, 2007*, Florida Auditor General, p. 14.

⁶² California, Hawaii, Idaho, Louisiana, Massachusetts, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

⁶³ Haw. Rev. Stat. Ann. §§ 302A-1182, 302B-5, and 302B-6 (2007) and N.Y. Educ. Law § 2851 (McKinney 2007).

⁶⁴ Cal. Educ. Code § 47605.5 (West 2007).

⁶⁵ Idaho Code § 33-5204A (2007); La. Rev. Stat. Ann. §§ 17:3996, 42:1101, and 42:1119 (West 2007); N.J. Rev. Stat. §§ 18A12-23.1 and 18A:12-24 (2007); Okla. Stat. Ann. 70 § 3-136 (2007); S.C. Code Ann. § 59-40-75 (Law. Co-op. 2007); Tenn. Code Ann. § 49-13-111 (2007); and Va. Code Ann. §§ 2.2-3103 and 22.1-212.13 (2007).

⁶⁶ Mass. Gen. Laws Ann. 71 § 89 (West 2007); 65 Pa. Cons. Stat. § 1104 (2007); and Tex. Educ. Code Ann. §§ 176.001 and 176.003 (Vernon 2007).

employees. This would avoid the current situation wherein the types of conflicts of interest law applicable depend on the charter school's organizational structure.

One approach would be to include charter school governing board members and employees within the scope of Florida's Code of Ethics as Public Officers and Employees.⁶⁷ This would include relatively stringent regulations that would prohibit related-party transactions such as the purchase, rental, or lease of any realty, goods or services from a business in which a charter school governing board member or employee has a material interest.

Another approach would be to amend charter school statute to only incorporate certain provisions of the Code or to adopt a separate code of ethics for governing board members and employees. These latter options would make it possible to afford charter schools some flexibility given that they often lack all of the resources possessed by traditional public schools. Due to this disparity, a related-party transaction for fair market value that is made in good faith with full disclosure to, and the unanimous consent of, governing board members, may be the best way for a charter school to achieve resource parity.

D. Academic Performance

1. Law --

School Grades: Charter schools are subject to the same academic performance accountability requirements applicable to traditional public schools. Thus, charter school students must take the Florida Comprehensive Assessment Test (FCAT) and charter schools are graded annually.⁶⁸

Florida's School Grading System requires the Commissioner of Education to prepare an annual performance report for each school and school district based primarily on student FCAT performance.⁶⁹ A school's grade is determined based on student achievement scores, student learning gains, and improvement of the lowest quartile of students.⁷⁰ Schools are graded on a scale of "A" to "F."⁷¹ Alternative schools⁷² receive a school improvement rating, but may elect to receive a school grade.⁷³

In order to receive a grade, a school must have at least 30 students with valid FCAT reading and math scores from the current and previous year.⁷⁴ Schools that do not meet these criteria do not receive a school grade. Further, a school that tests fewer than 90 percent of its students may receive a school grade of "I," or "incomplete," unless the DOE determines that its data accurately reflects that school's progress.⁷⁵ According to

⁶⁷ See Section 112.313, F.S.

⁶⁸ Section 1002.33(9)(1)1., F.S.

⁶⁹ Section 1008.34(1) and (3), F.S.

⁷⁰ Section 1008.34(3)(a), F.S.

⁷¹ Section 1008.34(2), F.S.

⁷² An alternative school provides dropout prevention and academic intervention under s. 1003.53, F.S.

⁷³ Section 1008.341, F.S.

⁷⁴ Rule 6A-1.09981(3)(c) and (4)(a) and (b), F.A.C.

⁷⁵ Rule 6A-1.09981(9)(b), F.A.C.

DOE representatives, these rules were established in order to ensure that a school's grade was based on a statistically valid sample size.⁷⁶

Charter school sponsors must ensure that each charter school participates in the state education accountability system and monitor the school's progress towards meeting the educational performance measures in its charter. Sponsors are required to report substandard performance to the DOE, and may terminate or not renew the charter if the school fails to participate in the accountability system or fails to meet the requirements for student performance in its charter.⁷⁷

Additionally, statute adopted in 2006 provides that the governing body of a charter school that receives a school grade of "D" must work with the sponsor to improve the school's academic performance.⁷⁸ Further, if a "D" is received for two consecutive years or if an "F" is received, the sponsor must require the school's governing body to implement a school improvement plan to improve student performance in the following year.⁷⁹ If student performance does not improve, the sponsor must place the school on probation and require it to take one of the following corrective actions:

- Contract with an outside provider to provide educational services at the school;
- Reorganize the school, make necessary staffing changes, and implement a plan that addresses the causes of inadequate progress; or
- Reconstitute the school.

The school must continue with corrective action until student performance improves.⁸⁰

High performing charter schools, like traditional public schools, may participate in Florida's School Recognition Program, which provides a financial award to schools that receive an "A" or that improve by at least one letter grade. Schools may use these funds to reward teachers, purchase educational equipment, or hire temporary personnel to assist the school in maintaining student performance.⁸¹

Adequate Yearly Progress: Title I of the No Child Left Behind Act (NCLB) establishes a goal that all students achieve proficiency in reading and math by 2014. Title I is a voluntary federal program that provides funding to assist states in educating low-income children. To receive Title I funding, a state must implement a system of challenging academic standards, academic assessments, and accountability that measures the progress of public schools and school districts in achieving the NCLB's student proficiency goals. This accountability system is known as "adequate yearly progress" or "AYP," which is determined based on the overall percentage, and the percentage in eight socioeconomic groups, of students who achieve proficiency in reading and math. To receive an AYP designation, a school must have at least 11 eligible students.⁸²

⁷⁶ Telephone conference with DOE representatives in July 2007.

⁷⁷ Section 1002.33(5)(b) and (8)(a)1., F.S.

⁷⁸ Chapter 2006-190, L.O.F., *codified at* s. 1002.33(9)(o), F.S.

⁷⁹ Chapter 2006-190, L.O.F., *codified at* s. 1002.33(9)(p), F.S.

⁸⁰ *Id.*

⁸¹ Section 1008.36(2) and (5), F.S.

⁸² 20 U.S.C.A. § 6311(a) and (b).

School Report Cards: Statute requires the DOE to annually develop a school report card that is to be published on its website and delivered to parents. For schools receiving grades, the report card must include: the school’s grade, information on school improvement, AYP data, and indicators of return on investment.⁸³ For alternative schools receiving a school improvement rating, the report card must include: the school improvement rating, identification of learning gains, student attendance data, information on school improvement, AYP data, and indicators of return on investment.⁸⁴

2. Findings –

School Grades: During the 2006-2007 school year, 216 of the 356 charter schools (61 percent) received school grades or points⁸⁵ and one school received an “I” or incomplete.⁸⁶ For the same time period, 2,683 of 3,058 (88 percent) non-charter public schools received grades or points and four schools received an “I.” These grades are summarized below:

2006-2007 School Grades⁸⁷

Grade	# of Charter Schools	% of Charter Schools	# of Traditional Public Schools	% of Traditional Public Schools
A	97	45%	1,380	51.4%
B	42	19%	427	15.9%
C	37	17%	552	20.5%
D	17	8%	202	7.5%
F	11	5%	72	2.7%
I	1	.05%	4	0.1%
P	12	6%	50	1.9%

The following sets forth the reasons that schools did not receive grades:

- *Charter schools:* Twenty-eight charter schools were not graded because less than 30 students had prior year FCAT scores; 106 charter schools were not graded because less than 30 students were eligible for testing; and five schools were not graded because they served Pre-K or juvenile delinquent populations.
- *Traditional Public Schools:* Nineteen traditional public schools were not graded because less than 30 students had prior year FCAT scores and 351 traditional public schools were not graded because less than 30 students were eligible for testing.⁸⁸

Adequate Yearly Progress: For the 2006-2007 school year, 305 of the 356 charter schools (86 percent) received AYP designations. Of the 305 receiving designations, 139 charter schools (46 percent) met AYP. In contrast, 34 percent of traditional public schools met AYP. Schools that did not receive AYP designations either served fewer

⁸³ Section 1008.34(5), F.S.

⁸⁴ Section 1008.341(5), F.S.

⁸⁵ A “P” means the school received points, which is available to alternative schools under s. 1008.341, F.S.

⁸⁶ An “I” means incomplete, which may be assigned by the DOE when a school tests fewer than 90 percent of its students. Rule 6A-1.09981(9)(b), F.A.C.

⁸⁷ White Paper on School Grades and Class Size Reduction Compliance, DOE, October 8, 2007.

⁸⁸ E-mail correspondence with DOE representatives dated December 10, 2007.

than 11 students or served special populations such as Pre-K, disabled, or delinquent students.⁸⁹

Reports: In a 2005 report, OPPAGA reviewed the academic performance of students attending charter schools during the 2003-2004 school year.⁹⁰ It found that charter school student populations were demographically similar to traditional public school populations, but that, on average, charter school students tended to be more academically behind when entering a charter school than students who remained in traditional public schools. Further, OPPAGA found that: (a) most charter school students achieved comparable learning gains in math and reading as similar students in traditional public schools; and (b) charter high school students, who were the furthest behind, made stronger learning gains in reading and math than similar students in traditional public schools.⁹¹

In addition to reviewing student learning gains, OPPAGA reviewed the applicability of state and federal accountability systems, i.e., school grading and AYP, to charter schools. It found that for the 2003-2004 school year:

- Forty-seven percent of charter schools were not graded because the schools had fewer than 30 students or did not serve grades in which the FCAT is administered.
- Twelve percent of charter schools were not subject to AYP designations under NCLB because they did not serve more than ten students.

In these instances, academic performance accountability should be accomplished via existing law that requires charters to contain academic performance expectations and requires sponsors to monitor the school's progress in meeting those expectations.⁹² However, OPPAGA found, after reviewing a sample of 50 charters, that these, "contracts generally do not establish clear academic performance expectations and often fail to include outcomes covering all grades served."⁹³ As a result, it is difficult for sponsors and the general public to hold charter schools accountable.⁹⁴ To address this issue, OPPAGA recommended that the Legislature amend s. 1002.33, F.S., to:

- Require revision of the academic performance expectations in contracts of newly approved charter schools at the end of the first year of operation to allow the schools to gather accurate baseline student performance data upon which expected outcomes can be established; and
- Require sponsors to certify to the SBE whether academic performance outcomes have been achieved.⁹⁵

⁸⁹ E-mail correspondence with DOE representatives dated December 11, 2007.

⁹⁰ *Charter School Performance Comparable to Other Public Schools; Stronger Accountability Needed* at 4.

⁹¹ *Id.* at 6.

⁹² See Sections 1002.33(5)(b) and (7) and 1002.335(11)(a), F.S.

⁹³ *Charter School Performance Comparable to Other Public Schools; Stronger Accountability Needed* at pp. 11 and 14.

⁹⁴ *Id.* at 14.

⁹⁵ *Id.*; See also *Florida Charter Schools: Hot and Humid with Passing Storms* at page 26 (reiterating the need for Florida to adopt the OPPAGA recommendations to improve oversight of charter school academic performance).

3. Policy options –

Consistent with OPPAGA's findings for the 2003-2004 school year, statistics for charter school grading and AYP designations for the 2006-2007 school year also indicate that a significant percentage of charter schools continue to not be subject to either the state or federal accountability systems, i.e., 39 percent of charter schools did not receive grades or school improvement ratings and 14 percent of charter schools did not receive AYP designations. Accordingly, the Legislature may wish to consider amending s. 1002.33, F.S., in the manner recommended by OPPAGA, in order to strengthen academic performance accountability in all charter schools.

Additionally, the Legislature may wish to consider requiring information specifying whether a charter school is achieving its academic performance outcomes in the report card of a school that does not receive a grade or improvement rating. This would serve to increase parental and public oversight of charter school performance.

E. Class Size Reduction Compliance

1. Law --

In 2002, voters amended Section 1, Article IX of the Florida Constitution to set forth specific maximum class size limits for public school classrooms. Under the amendment by the 2010-2011 school year, the maximum number of students that may be assigned to a teacher is: (a) 18 students in grades PK-3; (b) 22 students in grades 4-8; and (c) 25 students in grades 9-12. Until that year, the amendment requires districts to reduce the average number of students in each classroom by at least two annually until the maximum number of students is achieved. The amendment excludes the undefined term extracurricular courses; thus, it applies only to core curricula courses.⁹⁶

In 2003, the Legislature enacted s. 1003.03, F.S., to execute the amendment's requirements. This legislation made both charter and traditional public schools subject to the amendment's requirements and set forth an implementation schedule, which provides that class size, for purposes of determining compliance with the reduction goals, shall be measured at the:

- District level for each of the three grade groupings during Fiscal Years (FYs) 2003-2006.
- School level for each of the three grade groupings in FYs 2006-2008.
- Individual classroom level for each of the three grade groupings in FY 2008-2009 and thereafter.⁹⁷

Consequences for a district's failure to comply with class size reduction goals are:

⁹⁶ Section 1003.01(14), F.S., defines "core curricula courses" to include mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms. Section 1003.01(15), F.S., defines "extracurricular courses" to mean all courses that are not defined as "core-curricula courses," which may include, but are not limited to, physical education, fine arts, performing fine arts, and career education.

⁹⁷ Chapter 2003-391, s.2, L.O.F., *codified at* s. 1003.03, F.S.

- Beginning in FY 2003-2004, the DOE must transfer a district's class size reduction operating funds to class size reduction fixed capital outlay (FCO) in an amount proportionate to the amount of class size reduction not accomplished.
- Beginning in FY 2005-2006, districts must implement one of the following policies in the next school year: (a) year-round schools; (b) double sessions; (c) rezoning; or (d) changing instructional staff loads/scheduling.
- Beginning in FY 2006-2007, the DOE must develop a constitutional compliance plan for the district that includes the redrawing of school attendance zones to maximize use of facilities while minimizing additional use of transportation.⁹⁸

In lieu of transferring a proportionate amount of class size reduction funds to FCO for non-compliant schools, statute permits the Commissioner of Education in his or her discretion to recommend an alternative amount for the transfer when he or she finds that a school has made appropriate effort to meet the reduction requirements.⁹⁹ A DOE memo sets forth the process for schools to appeal a proposed funding transfer.¹⁰⁰

2. Findings –

Legislative History: Legislation filed in the House of Representatives in 2003 to implement the Class Size Reduction Amendment initially provided that alternatives to traditional public school instruction, i.e., charter schools, the Florida Virtual School, Advanced Placement, and other instruction, were not encompassed within the meaning of “core curricula,” and as such, were not subject to the amendment’s requirements.¹⁰¹ The legislation that ultimately passed, however, contained the broader definition of “core curricula” that is now current law. Thus, charter schools, like traditional public schools, must satisfy the amendment’s requirements.

Class size compliance statistics: For the 2006-2007 school year, when class size began being measured at the school level, 88 charter schools (25 percent) and 177 traditional schools (six percent), prior to appeals, did not meet class size caps or reduction criteria. After class size reduction appeals, 49 charter schools (14 percent) and 89 traditional schools (three percent) did not meet class size caps or reduction criteria.¹⁰² Subsequent to the appeals, a total of \$5,318,921 was transferred from operating class size reduction funds to class size reduction FCO in the aforementioned schools. Of that amount, \$2,056,794 was transferred for the 49 charter schools.¹⁰³

For the 2007-2008 school year, 19 charter schools (five percent) and 69 (two percent) of traditional schools, prior to appeals, did not meet class size caps or reduction criteria. Class size reduction appeals were required to be filed with the

⁹⁸ Section 1003.03(4)(a)-(c), F.S.

⁹⁹ Section 1003.03(4)(b), F.S.

¹⁰⁰ See DOE Memorandum, 2006-2007 School Average Class Sizes and Process and Time Lines for Appeal, November 29, 2006.

¹⁰¹ See House Bill 703 (2003); House of Representatives Staff Analysis for House Bill 703, March 20, 2003, p. 3.

¹⁰² White Paper on School Grades and Class Size Reduction Compliance, DOE, October 8, 2007.

¹⁰³ Memo: Charter School Class Size Fixed Capital Outlay, DOE, March 2, 2007.

Commissioner of Education by January 2, 2008. Appeal results are expected to be available in March 2008.¹⁰⁴

Reports: In its May 2006 report, Education Sector recommended that Florida's charter schools be exempted from class size reduction requirements. According to the report, "Charter schools are founded on the free market principals of competition and innovation, and they should have full control over how to determine their class size as they figure out the best way to educate children – and attract parents." Further, the report noted that, unlike traditional public schools, Florida's charter schools do not receive FCO for class size reduction compliance and as such, charter schools will be forced to pay for facilities costs from operating dollars or additional fundraising.¹⁰⁵

3. Policy options:

As indicated by the 2007-2008 class size compliance statistics above, there has been significant improvement in charter school compliance as compared with the 2006-2007 statistics, i.e., five percent of charter schools were non-compliant in 2007-2008 versus 25 percent in 2006-2007. The Legislature could further incentivize charter school class size compliance by only permitting the schools to receive operating funds for the number of FTE students permitted under the class size reduction implementation statute.

F. Financial Management

1. Law --

Financial Reporting: Each charter school must annually submit a financial report for inclusion in the district's annual report to the DOE.¹⁰⁶ Additionally, the chair of the FSEC must annually appear before the SBE and submit a report on the academic and financial status of its sponsored and cosponsored schools.¹⁰⁷ The financial information included in these reports must follow generally accepted accounting principles.¹⁰⁸ The report must include: assets, liabilities, and fund balances as of June 30th; annual revenues; and annual expenditures.¹⁰⁹ The charter school's report of expenditures for Florida Education Finance Program (FEFP) funded programs must be included in the district's annual Program Cost Report.¹¹⁰

Audits: Each charter school must provide for an annual financial audit.¹¹¹ The Auditor General may choose to conduct the audit. If not, the charter school must arrange for an audit by an independent CPA.¹¹²

¹⁰⁴ DOE PowerPoint Presentation, Update on the Class Size Amendment, January 8, 2008.

¹⁰⁵ *Florida Charter Schools: Hot and Humid with Passing Storms* at 23-24 and 28.

¹⁰⁶ Section 1002.33(9)(h), F.S.

¹⁰⁷ Section 1002.335(13), F.S.

¹⁰⁸ Charter schools operated by a nonprofit entity organized primarily to operate the charter school must follow generally accepted accounting principles for governmental entities. Charter schools operated by a nonprofit entity that manages multiple charter schools, conducts other functions, or municipality must follow the not-for-profit accounting model. Rule 10.855(3), Rules of the Auditor General.

¹⁰⁹ *Technical Assistance Paper: Updated Funding and Financial Management of Florida's Public Charter Schools*, DOE, No. 2006-03, November 2006, p. 3.

¹¹⁰ *Id.*

¹¹¹ Sections 1002.33(9)(g) and 1002.335(11)(a), F.S.

¹¹² Sections 11.45(3)(c) and 218.39(1)(e), F.S.

The audit must include an examination of the school's financial statements in order to determine that its financial position, any changes in financial position, and cash flow comply with generally accepted accounting principles. It must also examine the conduct of the school's operations for compliance with legal and regulatory requirements.¹¹³

In 2006, legislation was enacted to amend the annual financial audit requirement for charter schools so that the financial emergency conditions in s. 218.503, F.S., which are applicable to local government entities and district school boards, are also applicable to charter schools.¹¹⁴ The staff analysis for this legislation indicates that it was prompted by Auditor General and OPPAGA findings that charter schools, particularly new charter schools, were facing financial management challenges due to a lack of expertise in education budgeting and finance and government accounting conventions.¹¹⁵ The Auditor General's report specifically suggested that law governing charter schools be amended so that schools with deteriorating financial conditions could be identified and required to implement financial recovery plans.¹¹⁶

Determination of Financial Emergency: Section 218.503, F.S., as amended in 2006, specifies that a local government entity, charter school, and district school board shall be subject to review by the Governor, charter school sponsor, or Commissioner of Education, as appropriate, when any of the following conditions occur:

- Failure to pay certain debts when due, as a result of a lack of funds;
- Failure to transfer at the appropriate time due to lack of funds: employee income tax or employer and employee contributions for social security or benefit plans;
- Failure for one pay period to pay due to lack of funds: employee wages and salaries or retirement benefits; or
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial.¹¹⁷

When one or more of the above conditions occur, or will occur if action is not taken, the local government entity, district school board, and charter school must notify the Legislative Auditing Committee, and as appropriate, the Governor, Commissioner of Education, or sponsor. Also, when one or more of the above conditions occur for:

- A local government entity or a district school board, the Governor or the Commissioner, as appropriate, is to contact the entity to determine what actions have been taken to resolve the condition and whether state assistance is needed. If assistance is needed, the local government entity or district school board is considered to be in a state of financial emergency.
- A charter school, the sponsor must contact the governing body to determine what actions have been taken to resolve the condition. The sponsor **may** require a

¹¹³ Rule 10.855(2), Rules of the Auditor General.

¹¹⁴ Ch. 2006-190, L.O.F., *codified at* ss. 218.503 and 1002.33(9)(g), F.S.; Section 1002.335(11)(a), F.S.

¹¹⁵ House of Representatives Staff Analysis for HB 7103, Education Council, April 18, 2006, p. 5.

¹¹⁶ *Report on Significant Findings and Financial Trends in Charter School and Charter Technical Career Center Audit Reports Prepared by Independent CPAs for the Fiscal Year Ended June 30, 2004*, Auditor General, Report No. 2006-034, September 2005.

¹¹⁷ Section 218.503(1), F.S.

financial recovery plan to be prepared by the governing body, which plan must prescribe actions to eliminate the condition.¹¹⁸

The charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., adds that if an audit for a charter school reveals a state of financial emergency as defined in s. 218.503, F.S., it must be provided to the governing board within seven days and the sponsor and DOE must also be notified. The term “state of financial emergency,” however, is not defined in s. 218.503, F.S. The charter school statute further states that when a charter school is found to be in a state of financial emergency by a CPA or auditor the school must file a financial recovery plan with the sponsor within 30 days after receipt of the audit.

Thus, it appears that statute requires the CPA or auditor to make the determination that a charter school is in a state of financial emergency, without specifically citing the criteria upon which the CPA or auditor is to make that determination. In contrast, there must be a finding by the Governor for a local government entity or by the Commissioner of Education for a district school board that the entity or board needs state financial assistance before it is deemed to be in a state of financial emergency.

The DOE is statutorily required to develop guidelines for the development of financial recovery plans.¹¹⁹ These guidelines were published in March 2007.¹²⁰

2. Findings:

Reports: In September 2007, the Auditor General’s Office released a report on the audit findings for 321 charter and charter technical schools for Fiscal Year (FY) 2005-2006. Significant findings in the report included:

- *Failure to file audits:* A total of 340 charter schools were in operation during FY 2005-2006. Fourteen schools closed during that year. Of the remaining 326 schools, 321 filed audits. Five schools did not submit audits. Additionally, 54 schools filed their audits late.¹²¹
- *Financial emergency conditions:* Seventy-nine charter schools reported a deficit unreserved fund balance at the end of the fiscal year.¹²² Of the 79 schools, auditors reported 73 schools (23 percent of the 321 audits) as having met one or more of the financial emergency conditions specified in s. 218.503(1), F.S.¹²³ The deficit balances for these charter schools ranged from less than one percent to approximately 467 percent of the general fund or unrestricted fund

¹¹⁸ Section 218.503(3) and (4), F.S.

¹¹⁹ Section 218.503(4) and 1002.33(7)(a)10., F.S.

¹²⁰ See *Technical Assistance Paper: Charter School Financial Recovery Plan*, DOE, No. 2007-12, March 2007.

¹²¹ *Report on Significant Findings and Financial Trends in Charter School and Charter Technical Career Center Audit Reports Prepared by Independent CPAs for the Fiscal Year Ended June 30, 2006*, Auditor General, Report No. 2008-018, September 2007, p. 3.

¹²² The report states that, “For three charter schools, combined financial statements were presented without identifying the balances for the individual charter schools, thus fund balance information was not identifiable.” *Id.* at 7.

¹²³ The audit reports for the remaining six charter schools did not address the financial emergency conditions because the reported deficits were the result of reserves for encumbrances on the balance sheet for the general fund. *Id.* at 7.

revenues, with an average of approximately 17 percent. Regarding the deficit fund balances reported by 79 schools, the Auditor General noted that:

- Eighteen of these schools were in the first year of operation;
 - Forty-eight had reported deficit balances in the previous year; and
 - Forty-eight did not disclose their plans to eliminate the deficit, although such disclosure is required by generally accepted accounting principles.
- *Charter Contract Compliance:* Audits for 44 charter schools indicated noncompliance with charter contracts. Reported deficiencies included insurance coverage, untimely submission of financial reports, and prohibited leases or purchase of property from a charter school officer or employee.

State of Financial Emergency: As discussed above, under legislation adopted in 2006, audits must now indicate whether a charter school has met a condition specified in s. 218.503(1), F.S. The charter school statute then refers to an audit for a charter school revealing a “state of financial emergency” as defined in s. 218.503, F.S.; however, that term is not defined. The charter school law also indicates that the CPA or auditor may find the charter school to be in a state of financial emergency, but does not specify the criteria upon which that determination is to be made. Such a determination is significant as a charter school is required to implement a financial recovery plan when it is in a state of financial emergency. Moreover, a school’s charter may be terminated for such a finding and it is likely that the school would not be eligible for FCO funding; such eligibility requires the school to, “[h]ave financial stability for future operation as a charter school.”¹²⁴

The Auditor General’s report for FY 2005-2006 states that approximately 23 percent of the charter school audits indicated that the school met a condition of financial emergency. None of those audits, however, indicated whether the school was in fact deemed to be in a state of financial emergency for which a financial recovery plan is required.

3. Policy Options --

Audit filing: Currently, if a charter school fails to file an audit, the Legislative Auditing Committee may hold a hearing to determine if the school should be subject to further state action. If the Committee determines that such action is appropriate, the Committee is to notify the sponsor, which may then terminate the school’s charter.¹²⁵

Given the serious nature of a charter termination, such a penalty is a choice of last resort. Additionally, it doesn’t address the late filing of audits. Due to the apparent prevalence of untimely audit filings by charter schools (54 schools failed to timely file, and five schools never filed, for FY 2005-2006), the Legislature may wish to consider enacting financial penalties for failure to comply with audit filing requirements.

State of Financial Emergency: The Legislature may wish to consider clarifying the law relating to a state of financial emergency for charter schools so that the law’s intended

¹²⁴ Section 1013.62(1)(b), F.S.

¹²⁵ Sections 11.40(5)(c) and 11.45(7)(a), F.S.

purpose of identifying and addressing schools with deteriorating financial situations is achieved. Specific issues that may be addressed include:

- *Specifying the criteria for a finding that school is in a state of financial emergency.* The fact that a school may meet one of the conditions in s. 218.503(1), F.S., does not appear, by itself, to always warrant a determination that it is in a state of financial emergency. For example, a charter school, particularly new charter school, may have a deficit unreserved fund balance at the end of a fiscal year that will shortly be resolved by funding in the following fiscal year. Such a situation does not necessarily evidence a deteriorating financial status. Instead, it appears that all facts and circumstances surrounding a finding that a school has met a statutory condition should be reviewed. If the review finds that the school does not have financial stability for future operation, then it would appear warranted that the school be deemed as being in a state a financial emergency and required to implement a financial recovery plan.
- *Specifying precisely who or what entity is required to make the determination that the school is in a state of financial emergency.* Current law authorizes the CPA or auditor to make this determination; however, the Legislature may wish to consider placing this responsibility on the school's sponsor. The sponsor is already tasked with monitoring the revenues and expenditures of the school. Moreover, the sponsor should be more knowledgeable about the school's day-to-day financial operations than a CPA or auditor, who only reviews the school annually. Accordingly, the law could be amended to provide that when a charter school meets a statutory condition in s. 218.503(1), F.S., the sponsor must: (a) review the school's financial status and determine if it should be deemed to be in a state of financial emergency; and (b) provide a written explanation of the reasons for its determination to the Commissioner of Education and Auditor General.
- *Requiring oversight for implementation of the financial recovery plan.* Current law requires the governing board to submit the financial recovery plan to its sponsor. The sponsor should, under its existing statutory duty to oversee the school's revenues and expenditures, monitor the school's progress in implementing the plan. In order to further ensure the oversight of financial recovery plan implementation, the Legislature may wish to also add a requirement that the sponsor annually report the school's progress in implementing the plan in its annual accountability report to the Commissioner of Education under s. 1002.33(9)(l), F.S.

APPENDIX A

Student Demographics in Florida Public Schools

Student Demographics	Charter Schools	% of Charter School Population	Traditional Public Schools	% of Traditional Public School Population
Gender				
Female	49,648	50%	1,245,268	48.6%
Male	49,726	50%	1,318,995	51.4%
Total	99,374		2,564,263	
Race/Ethnicity				
Caucasian	41,395	41.7%	1,202,694	46.9%
Black	22,693	22.8%	594,127	23.2%
Hispanic	29,838	30.0%	615,930	24%
Asian	1,743	1.8%	59,695	2.3%
American Indian	296	0.3%	7,590	0.3%
Multiracial	3,409	3.4%	84,227	3.3%
Total	99,374		2,564,263	
Lunch Status				
Free or Reduced Price Lunch Eligible	34,970	35.2%	1,173,987	45.8%
Ineligible or did not apply	64,404	64.8%	1,390,276	54.2%
Total	99,374		2,564,263	

Data provided by the DOE based on Survey Two final data for the 2006-2007 school year.

APPENDIX B

Charter School Funding

Charter school students are statutorily required to be funded in the same manner as students in traditional public schools.¹²⁶ The following discussion provides an overview of each aspect of charter school funding.

Operating funds: Operating funds for charter schools are provided via the FEFP. Each charter school must report its enrollment to its sponsor and the sponsor must include this enrollment in the district's report of student enrollment.¹²⁷ Annually, charter schools must complete and submit a Charter School Revenue Estimate Worksheet that is used to determine its share of FEFP funds.¹²⁸ The following chart summarizes how a charter school's share of FEFP funds is determined:

Calculating a Charter School's Share of FEFP Funds¹²⁹

1. Sum of the school district's operating funds from the FEFP as provided in s. 1011.62, F.S., and the General Appropriations Act, ¹³⁰ including the district's gross state and local funds, ¹³¹ discretionary lottery funds, and funds from the district's current operating discretionary tax levies. ¹³²
2. ÷ The total funded weighted FTE students ¹³³ in the district.
3. x The weighted FTE students for the charter school.

A charter school is also entitled to receive its proportionate share of categorical funds included in the FEFP for its students who qualify under the eligibility criteria for the categorical. Categorical funds include student transportation, safe schools, supplemental academic instruction, instructional materials, class-size reduction

¹²⁶ Section 1002.33(17), F.S.

¹²⁷ Section 1002.33(17)(a), F.S.

¹²⁸ See Charter School Revenue Estimate Worksheet and Instruction *available at* <http://www.fldoe.org/fefp/chartinst.asp>.

¹²⁹ Section 1002.33(17)(b), F.S.

¹³⁰ For a detailed explanation of the FEFP funding formula, see the document entitled, *Education Funding Summary 2007-2008*, published by the Senate Education PreK-12 and Higher Education Appropriations Committees. The document is available at: http://www.flSenate.gov/data/committees/Senate/EA/EdFundingsummary_2007.pdf

¹³¹ The term "gross state and local funds" means the total of the following amounts: Base FEFP Funding + Declining Enrollment Supplement + Sparsity Supplement + Lab School Discretionary Contribution + Safe Schools Allocation + Supplemental Academic Instruction Allocation + ESE Guaranteed Allocation + .25 Mill Equalization Supplement + .51 Mill Compression Supplement + Reading Instruction Allocation + Merit Award Program Allocation + DJJ Education Supplemental Allocation + Minimum Guarantee Allocation. See *Education Funding Summary 2007-2008* at p. 108.

¹³² For 2007-2008, the district's current nonvoted operating discretionary tax levies consist of 0.51 mills and .25 mills. See 2007-2008 General Appropriations Act, Specific Appropriation 86, Senate Bill 2800, Chapter 2007-72, L.O.F.; Sections 1011.62(5) and 1011.71(1), F.S.

¹³³ A weighted FTE is calculated by multiplying an unweighted FTE by applicable program cost factors that are annually established by the Legislature, e.g., cost factors for grade level and special education needs. Section 1011.62(1)(c), F.S.

operating funds, and Florida Teachers Lead.¹³⁴ Categorical funds must be spent for these specific purposes.

Distribution of Operating Funds: Operating funds from the FEFP are to be distributed by the school district to the charter school. A school district may distribute funds for up to three months based on projected FTE student membership. Thereafter, FTE membership surveys must be used to determine the amount of the charter school's funding distribution and such distributions are to be made monthly and no later than 10 days after the school district receives the funding.¹³⁵

Administrative Fees for Sponsor-Provided Services: Florida law authorizes charter school sponsors to withhold an administrative fee of up to five percent of charter school operating fund disbursements.^{136 137} The fee may only be assessed on charter school enrollment up to 500 students. For enrollment over 500, the difference between the total administrative fee calculation and the allowable administrative fee may only be used by the charter school's governing body for capital outlay purposes.¹³⁸

In exchange for the administrative fee, sponsors must provide administrative and educational services. These services are described at page seven of this report.¹³⁹

Charter School Capital Outlay: Section 1013.62, F.S., provides for the distribution of capital outlay funds to charter schools. Eligibility for charter school capital outlay funding is based on the following criteria:

- The school has been in operation for at least 3 years, is created as part of a feeder pattern with an existing charter school in the district, or is accredited by the Southern Association of Colleges and Schools;
- The school demonstrates financial stability;
- The school achieves satisfactory student performance;
- The school receives final approval from its sponsor; and
- The school serves students in facilities not provided by the charter school sponsor.¹⁴⁰

First priority for this funding is given to charter schools that received funding in 2005-2006. Charter schools that did not receive funding in 2005-2006 may be eligible for an allocation subject to funds availability. Any funds remaining after these distributions are made are allocated among all eligible charter schools. Each school's capital outlay allocation must not exceed 1/15th of the statutory cost per student station.¹⁴¹

Charter schools may use capital outlay funds for the purchase of real property; construction of school facilities; purchase, lease-purchase, or lease of permanent or

¹³⁴ See Sections 1011.68, 1011.62(6), 1011.62(1)(f), 1011.67, 1011.685, and 1012.71, F.S., respectively.

¹³⁵ Section 1002.33(17)(d), F.S.

¹³⁶ Section 1002.33(20)(a), F.S.

¹³⁷ See Section 1002.335(11)(b), F.S. (stating that the FSEC or its cosponsors may only charge the actual cost of administrative overhead not to exceed five percent).

¹³⁸ Sections 1002.33(20)(a) and 1002.335(11), F.S.

¹³⁹ Section 1002.33(20), F.S.

¹⁴⁰ Section 1013.62(1), F.S.

¹⁴¹ *Id.*

portable school facilities; purchase of vehicles to transport students to and from the charter school; and renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.¹⁴²

During the past three fiscal years, the Legislature appropriated the following amounts for charter school capital outlay funds:

Charter School Capital Outlay Appropriations

Fiscal Year	Amount of Capital Outlay Appropriation
2005-2006	\$27.7 million ¹⁴³
2006-2007	\$53.1 million ¹⁴⁴
2007-2008	\$54 million ¹⁴⁵

Federal Funding: A charter school is entitled to receive its proportionate share of funds for federally funded programs or services provided by the school.¹⁴⁶ Florida school districts act as the LEAs for purposes of receiving federal funds; thus, funds for federal entitlement programs, such as the Individuals with Disabilities Act and the No Child Left Behind Act, are received by the school district, which is to then distribute the proportionate share to eligible charter schools within the district.

Charter schools may also receive federal grant funding. Funds through the Charter School Program (CSP) Grant are offered on an as available, competitive basis to:

- Newly-approved charter schools during the first three years of operation. The funds may be used for planning, design, and initial implementation of the school.
- Charter schools that have successfully been in operation for at least three consecutive years. These funds may be used for support activities that help open new public schools or share lessons learned by charter schools with other public schools.¹⁴⁷

Charter schools may apply for these funds through the DOE, which acts as the state educational authority for purposes of the CSP.

Impact Fees: In 2004, the Legislature authorized developers to designate impact fees for the construction of a new charter school facility, if the school is specifically created to mitigate the educational impact created by the development.¹⁴⁸

Two-Mill Funds: Each school district may levy up to two mills,¹⁴⁹ in addition to the operating discretionary tax levies discussed above, for school purposes. These funds

¹⁴² Section 1013.62(2), F.S.

¹⁴³ 2005-2006 General Appropriations Act, Specific Appropriation 17, Chapter 2005-70, L.O.F.

¹⁴⁴ 2006-2007 General Appropriations Act, Specific Appropriation 28, Chapter 2006-25, L.O.F.

¹⁴⁵ 2007-2008 General Appropriations Act, Specific Appropriation 24, Chapter 2007-72, L.O.F.

¹⁴⁶ Section 1002.33(17)(c), F.S.

¹⁴⁷ See U.S. Department of Education, Charter Schools Grant Program description *available at* <http://www.ed.gov/programs/charter/index.html>

¹⁴⁸ Section 1002.33(18)(e), F.S.

may only be spent for specified purposes that include: new construction and remodeling projects; maintenance, renovation, and repair of existing school facilities; and purchase or lease of school buses and equipment.¹⁵⁰

In 2006, the Legislature authorized, but did not require, school districts to share two-mill funds with charter schools.¹⁵¹ Data indicating which school districts share two-mill funds is not collected at the state-level. Twenty-six of Florida's 67 counties do not have charter schools within the district. Of the remaining 42 districts with charter schools, 31 districts completed applications for charter school authorization exclusivity, which were considered by the SBE at its September and October 2007, meetings. The applications requested that each district indicate whether it shares two-mill funds for purposes of charter school facility. Of the 31 applications, six districts represented that they share two-mill funds with charter schools.¹⁵²

Tax, Zoning, and Fee Exemptions: Florida law provides several tax, zoning, and fee exemptions that financially benefit charter schools. A structure that houses a charter school is exempt from ad valorem taxation. This includes charter schools-in-the-workplace and charter schools-in-a-municipality.¹⁵³ In addition, Florida law authorizes library, community service, museum, performing arts, theatre, church, community college, and university facilities to provide space to charter schools under preexisting zoning and land use designations.¹⁵⁴ Charter schools are also exempt from assessments of fees for building permits, building and occupational licenses, impact fees, service availability fees, and assessments for special benefits.¹⁵⁵

¹⁴⁹ To levy this millage, a school district must annually publish a notice of its intent, which specifies the projects such funds will be used for, and must hold a public hearing. Section 200.065(10), F.S.

¹⁵⁰ Section 1011.71(2)(a)-(i), F.S.

¹⁵¹ See Chapter 2006-190, s. 9, L.O.F., *codified at* s. 1011.71(2), F.S.

¹⁵² A summary of each application is available at:

<http://www.floridaschoolchoice.org/CSSStandardReview/PublicDistrictOption.aspx>

¹⁵³ Section 1002.33(15) & (18)(c), F.S.

¹⁵⁴ Section 1002.33(18)(c), F.S.

¹⁵⁵ Section 1002.33(18)(d), F.S.

APPENDIX C

Appeals

The following summarizes the types of review available for decisions relating to charter schools.

Charter School Appeal Commission

Disputes relating to a sponsor's denial of a charter school application or to the termination or non-renewal of a charter are to be appealed to the SBE. The Charter School Appeal Commission (CSAC) is responsible for reviewing the case and issuing recommended actions to the SBE. The CSAC is comprised of an equal number of representatives from charter schools and sponsors, who are appointed by the Commissioner of Education.¹⁵⁶ The SBE in determining whether to uphold or overturn a sponsor's decision must consider the CSAC's recommendation, but is not bound by it.¹⁵⁷

Denial of an Application for a Charter – If a sponsor denies a charter school application, it must notify the applicant and the DOE in writing of its specific reasons for the denial, based upon good cause, within ten days of its decision.¹⁵⁸ The term “good cause” is not statutorily defined. Florida courts have held that good cause to deny a new charter school application: (a) was shown where the applicant's existing charter school was academically and fiscally non-compliant;¹⁵⁹ and (b) was not shown where the application met all statutory requirements and the school board failed to produce evidence demonstrating that approval of the new charter school would adversely impact other schools in the district.¹⁶⁰

The applicant may appeal the denial within 30 days after receipt of the written notice. The sponsor may submit a response to the appeal within 30 calendar days after notification of the appeal. The SBE must then convene the CSAC to review the case and make recommendations to the SBE. The CSAC must submit its recommendation to the SBE within seven calendar days prior to the hearing. Upon making its decision, the SBE must then remand the application to the sponsor with its written decision. The sponsor must approve or deny the application as directed by the SBE. The SBE's decision is final action subject to review in the district court of appeal.¹⁶¹

A charter school applicant whose application is denied by a school district that has not been granted exclusive charter school sponsoring authority may not immediately appeal the decision to the SBE. It must first submit its application to the FSEC and may only appeal if the FSEC also denies the application.¹⁶² However, as of December 2007, DOE

¹⁵⁶ Section 1002.33(6)(f), F.S.

¹⁵⁷ Section 1002.33(6)(c) and (f)2., F.S.

¹⁵⁸ Sections 1002.33(6)(b)3 and 1002.335(9), F.S.

¹⁵⁹ *Imhotep-Nguzo Saba Charter School v. Department of Education*, 947 So.2d 1279 (Fla. 4th DCA 2007).

¹⁶⁰ *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. 5th DCA 2005).

¹⁶¹ Section 1002.33(6)(c),(e), and (f), F.S.

¹⁶² Section 1002.33(6)(d), F.S.

representatives have advised charter schools and sponsors to follow the standard appeal process because the FSEC has not yet begun authorizing charter schools.¹⁶³

Termination or Nonrenewal of Charter – A sponsor may choose to terminate or not renew a charter school for any of the following reasons:

- Failure to participate in the state’s education accountability system or to meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of fiscal management;
- A violation of law; or
- Other good cause shown.¹⁶⁴

A sponsor must provide 90-days written notice to the charter school prior to termination or non-renewal, except that, “a charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened.”¹⁶⁵ Under these circumstances, the school district is to assume operation of the school.¹⁶⁶ A Florida court recently held that that the provisions of Chapter 120, F.S., the Administrative Procedure Act (APA), apply to the termination of a charter school. Accordingly, the case held that prior to the immediate termination of a charter school for good cause, the APA requires the sponsor to: (a) provide 14-days notice to the charter school of its intent to terminate; and (b) hold a hearing to determine whether good cause has been shown.¹⁶⁷

Following an immediate termination of a charter, a charter school may file an appeal with the SBE within 30 days after the notice of termination.¹⁶⁸ Within 14 days following receipt of a 90-day notice to not renew or terminate a charter, a charter school may request that the sponsor conduct an informal hearing. The informal hearing must be held within 30 days after the request. The charter school may appeal an unfavorable decision to the SBE within 14 days after receiving the sponsor’s informal hearing decision.¹⁶⁹

When a charter is not renewed or is terminated, the school is dissolved and any unencumbered public funds from the school revert to the sponsor, except that capital outlay funds and federal CSP grant funds revert to the DOE for redistribution among eligible schools.¹⁷⁰

According to data provided by the DOE, a total of 96 charter schools were closed between 1996 and 2006. Of this number, 44 were closed by the sponsor, e.g., the district or the municipality; 46 were closed by the charter school governing board; four

¹⁶³ Memo: Interim Process for Appealing District Denials of Charter School Applications, DOE, November 22, 2006.

¹⁶⁴ Sections 1002.33(8) and 1002.335(4)(a)1. and (11)(a), F.S.

¹⁶⁵ Sections 1002.33(8)(d) and 1002.335(4)(a)1. and (11)(a), F.S.

¹⁶⁶ *Id.*

¹⁶⁷ *Survivors v. School Board of Palm Beach County*, 32 Fla.L.Weekly D1670 (4th DCA July 11, 2007).

¹⁶⁸ Section 1002.33(8)(c), F.S.

¹⁶⁹ Section 1002.33(8)(b), F.S.

¹⁷⁰ Section 1002.33(8)(e), F.S.

were closed pursuant to mutual agreement between the sponsor and charter school governing board; and two closures are of unknown origin.¹⁷¹

CSAC Outcomes – A summary of CSAC appeal outcomes for calendar years 2004, 2005, and 2006 is provided below:

2004: The CSAC convened six times and heard 23 appeals. The SBE adopted the CSAC's recommendations in 13 percent of cases.

- Type of Appeal:
 - Twenty Application Denials:
 - Five applicants withdrew their appeals.
 - One case was remanded to the district.
 - The SBE upheld the district in seven cases
 - The SBE overturned the district in seven cases.
 - Two Terminations: The SBE upheld the district in both cases.
 - One Nonrenewal: The SBE overturned the district.

2005: The CSAC convened seven times and heard 15 appeals. The SBE adopted the CSAC's recommendations in 20 percent of cases.

- Type of Appeal:
 - Ten Application Denials:
 - One applicant withdrew its appeal.
 - The SBE upheld the district in six cases.
 - The SBE overturned the district in three cases.
 - Five Terminations:
 - Two appeals were withdrawn
 - The SBE upheld the district in three cases.

2006: The CSAC convened seven times and heard 18 appeals. The SBE adopted the CSAC's recommendations in six percent of cases.

- Type of Appeal:
 - Fourteen Application Denials:
 - Six applicants withdrew their appeal.
 - The SBE upheld the district in six cases.
 - The SBE overturned the district in two cases.
 - Three Terminations: The SBE upheld the district in all three cases.
 - One Nonrenewal: The SBE upheld the district.¹⁷²

Exclusivity Decisions

The SBE's decision to grant or deny exclusivity to a school district to authorize charter schools is final action subject to review by the district court of appeal. The SBE's decision on exclusivity is not subject to the APA.¹⁷³

¹⁷¹ E-mail correspondence with DOE representatives dated September 11, 2007.

¹⁷² E-mail correspondence with DOE representatives dated November 20, 2007.

¹⁷³ Section 1002.335(5)(f), F.S.

Mediation and Administrative Review

The DOE is to provide mediation services for any dispute under s. 1002.33, F.S., the charter school law, except those relating to the denial of a charter school application.¹⁷⁴ If the Commissioner of Education determines that the dispute cannot be resolved through mediation, it may be appealed to the Division of Administrative Hearings where an Administrative Law Judge (ALJ) may, “rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal.”¹⁷⁵ The ALJ is required to award the prevailing party reasonable attorney's fees and costs to be paid by the losing party.¹⁷⁶

¹⁷⁴ Section 1002.33(6)(i), F.S.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

APPENDIX D

Summary of Recommended Policy Options

A. Applications and Charters:

Charter school application evaluation process: Statute does not address the evaluation process for charter school applications. The Legislature may wish to consider incorporating reference to the DOE's model evaluation process and evaluation instrument in statute. Such reference would provide guidance to, and encourage uniformity among, sponsors when evaluating applications.

B. Sponsorship:

School district exclusivity: The exclusivity application process appeared to be a labor-intensive, time-consuming task for school districts, the DOE, and the SBE. In order to make this process less burdensome on an annual basis, the Legislature may wish to consider amending statute to specify that a grant of exclusivity lasts for a specified period of years, e.g., three to five years.

Sponsor performance reporting: In order to make Florida charter school sponsor performance easily accessible for public oversight, the Legislature may wish to consider amending s. 1002.33(23), F.S., to require the DOE's annual charter school report to provide performance data aggregated by sponsor.

C. Organization and Governance:

Conflicts of interest: The Legislature may wish to clarify charter school law to specifically and consistently address conflicts of interest issues for governing board members and employees.

One approach would be to include charter school governing board members and employees within the scope of Florida's Code of Ethics as Public Officers and Employees. This would include relatively stringent regulations that would prohibit all related-party transactions.

Another approach would be to amend charter school statute to only incorporate certain provisions of the Code or to include a separate code of ethics and clear standards for prohibited conduct for governing board members and employees. Under these latter options, it would be possible to afford charter schools some flexibility to enter into beneficial transactions while prohibiting transactions that are in bad faith or detrimental to the school's financial stability.

D. Academic Performance:

School Grading and AYP: Each year, a significant percentage of charter schools do not receive school grades or AYP designations. For the 2006-2007 school year, 39 percent of charter schools did not receive grades or school improvement ratings and 14 percent of charter schools did not receive AYP designations. Accordingly, the Legislature may

wish to follow the OPPAGA's 2005 recommendations for addressing this issue, which provided that s. 1002.33, F.S., should be amended to:

- Require revision of the academic performance expectations in contracts of newly approved charter schools at the end of the first year of operation to allow the schools to gather accurate baseline student performance data upon which expected outcomes can be established; and
- Require sponsors to certify to the SBE whether academic performance outcomes have been achieved.

Additionally, the Legislature may wish to consider requiring information specifying whether a charter school is achieving its academic performance outcomes in the report card of a school that does not receive a grade or improvement rating. This would serve to increase parental and public oversight of charter school performance.

E. Class Size Reduction Compliance:

Compliance incentives: Charter school compliance with class size reduction requirements has significantly improved, i.e., five percent of charter schools were non-compliant in 2007-2008 versus 25 percent in 2006-2007. The Legislature could further incentivize charter school class size compliance by only permitting the schools to receive operating funds for the number of FTE students permitted under the class size reduction implementation statute.

F. Financial Management

Penalties for failure to timely file audits: Under current law, the only penalty for a charter school that fails to file an annual audit is termination of its charter by the sponsor. There is no statutory penalty for late filing of audits, despite the apparent prevalence of untimely audit filings by charter schools (54 schools failed to timely file and five schools never filed for FY 2005-2006). The Legislature may wish to consider enacting financial penalties to be imposed on schools failing to comply with audit filing requirements.

State of Financial Emergency: The Legislature may wish to consider clarifying the law relating to a state of financial emergency for charter schools so that the law's intended purpose of identifying and addressing schools with deteriorating financial situations is achieved. Specific issues that may be addressed include:

- *Specifying the criteria for a finding that a charter school is in a state of financial emergency.* The fact that a school may meet one of the statutory financial emergency conditions does not necessarily mean that it is in a state of financial emergency. A process that considers all facts and circumstances when a school has met a condition may allow sponsors to better determine whether the school truly needs to implement a financial recovery plan.
- *Specifying precisely who or what entity is required to make the determination that the charter school is in a state of financial emergency.* The Legislature may wish to consider placing the responsibility for the determination on the school's sponsor, instead of the CPA or auditor. The sponsor is currently tasked with

monitoring the revenues and expenditures of the school and should be more knowledgeable about the school's day-to-day financial operations.

- *Requiring oversight for implementation of the financial recovery plan.* Current law requires the governing board to submit the financial recovery plan to its sponsor. The sponsor is required to monitor the school's progress in implementing the plan. The Legislature may wish to also add a requirement that the sponsor annually report the school's progress in implementing the plan to the Commissioner of Education. This would further ensure that oversight of plan implementation occurs.